

BEFORE THE ARIZONA CORPORATION COMMISSION

LEA MARQUEZ PETERSON
CHAIRWOMAN

SANDRA KENNEDY
COMMISSIONER

JUSTIN OLSON
COMMISSIONER

ANNA TOVAR
COMMISSIONER

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COMMISSIONER

IN THE MATTER OF IMPACT OF THE
CLOSURES OF FOSSIL-BASED
GENERATION PLANT ON IMPACTED
COMMUNITIES

DOCKET NO. E-00000A-21-0010

RUCO'S NOTICE OF FILING COMMENTS AND RECOMMENDATIONS

The Residential Utility Consumer Office ("RUCO") hereby submits the following
Comments and Recommendations in the above captioned docket.

**INTRODUCTION/THE ISSUE OF RATEPAYER VS. SHAREHOLDER
RESPONSIBILITY**

RUCO has participated in the generic docket fulfilling its stated promise of examining
the information submitted and asking the tough questions. A review of the Staff Task Support
Meeting Summaries dated April 14, 2022, and May 12, 2022, sums up the questioning and
concerns RUCO raised in this generic docket.

It is no secret that RUCO has questioned the ratepayers' responsibility and obligations
concerning Community Coal Transition ("CCT"). RUCO had not been convinced the ratepayer
should be responsible for costs associated with CCT prior to the generic docket but, has kept
an open mind pending a further vetting of the issues and the reasons justifying ratepayers'
responsibility in the generic docket. RUCO felt the pertinent questions were asked in the

1 docket but little if any additional information was provided or offered justifying residential
2 ratepayer responsibility for CCT revenue requests¹. There certainly was an opportunity to
3 form a record in the generic docket upon which to base residential ratepayer responsibility for
4 CCT costs. The generic docket was well run by Staff, well attended by interested stakeholders
5 and was well documented. For the most part, in the subsequent generic docket meetings
6 RUCO heard a common response to the questions it raised as well as the issues raised in
7 Chairwoman Marquez Peterson's letter of February 25, 2022 - those questions were raised in
8 the recent APS and TEP rate cases and the answers can be found there. RUCO disagrees, or
9 at best believes the information provided in the rate cases was insufficient, not complete, and
10 overall not persuasive which RUCO understood was the main reason for the generic docket -
11 to supplant the record on the issue in order to make a comprehensive Commission policy on
12 CCT. In the end, the supplemental record made in the generic docket from RUCO's
13 perspective was mostly a repetition of what has already been offered and has failed to move
14 RUCO towards recommending a Commission policy involving the recovery of CCT costs from
15 residential ratepayers.

16 Chairwoman Marquez Peterson, in her letter of February 25, 2022 noted:

17 As Chair of the Arizona Corporation Commission however, I
18 must also ensure that any actions the Commission considers or
19 proposes with respect to assisting coal-impacted communities fall
20 squarely within the Commission's jurisdiction, are supported by
21 substantial evidence, and protect ratepayers from the incurrence of
22 any voluntary and avoidable costs. **Every decision the Commission
23 issues must be based on substantial evidence-especially when
24 ratepayer funds are involved-or else all time and efforts will be in
vain.**² (Emphasis added).

¹ RUCO also listened to the various Town Hall meetings held throughout the state.

² See Chairwoman Marquez Peterson Letter of February 25, 2022 in this docket at page 2.

1 The evidence presented in the generic docket in support of residential ratepayer
2 responsibility can at best be described as scant and non-persuasive. This conclusion is
3 highlighted by the fact that the main argument in support of CCT funding supports
4 shareholder responsibility - not ratepayer.

5 The Navajo Nation ("Nation"), in "The Navajo Nation's Comments related to
6 Commissioner's Questions" ("Nation's Comments" or "Comments") dated April 20, 2022 noted
7 the following:

8 Given the Commission's findings that the early retirement of
9 these coal plants and the associated regulatory assets for utilities is
10 prudent and in the public interest, logic requires that costs (including
these CCT costs) flowing to the Nation as a result of the early
retirement also be found prudent and be recoverable in rates.

11 The Commission has approved utility recovery of a regulatory
12 asset associated with the early retirement of the relevant coal plants
13 because it has concluded that lower cost power can be provided from
alternative generation and fuel options.³

14 See for example "The Navajo Nation's Comments related to Commissioner's Questions"
15 dated April 20, 2022 at pages 1-2. The Nation's reference is to APS' recent announcement
16 concerning the early closure of the Four Corner's plant. On January 22, 2020, APS issued a
17 press release announcing its newly adopted Clean Energy Commitment which is centered
18 around a goal to deliver 100 percent clean, carbon-free electricity to customers by 2050.⁴
19 APS further announced that it will end all coal-fired generation by 2031, seven years sooner
20 than previously projected.⁵ The only coal fired generation that APS is scheduled to have in

22 ³ See, e.g. ACC Decision No. 78317 at 411 (related to the next APS IRP and retirement of Four Corners
23 Power Plant); id. at I 13-14 (noting role of natural gas prices on resource planning and plant dispatch).

24 ⁴ See Docket No. E-01345A-19-0236 (APS' last rate case, Exhibit Nos. RUCO-1 at 11, Exhibit FWR-3,
RUCO-10.

⁵ Id.

2031 is the Four Corners Generating Station.⁶ APS, not its ratepayers, unilaterally decided to close the Four Corners Plant earlier than what was projected and what the ratepayers had understood previously.

Given the Company's unilateral decision and unexpected announcement, why should its ratepayers, and not its shareholders, be responsible for CCT costs associated with the early closure? With the Clean Energy Commitment, in exchange for giving up prematurely seven years of a generation source, ratepayers will be paying a return of and a return on the Four Corners plant for seven years beyond its useful life - seven years of use which APS, the ratepayers, the Commission and other stakeholders originally intended and bargained.⁷ In addition, for those seven years beyond 2031, ratepayers will also have to pay for the alternative generation and its associated costs to replace the Four Corners generation. The cost of the early closure to APS' ratepayers is high, even before the cost of the replacement energy is considered. There is no margin here for additional residential ratepayer costs that do not improve the customer's service in any way.

The utilities, not the ratepayers, are responsible for determining the utilities' generation, transmission, and distribution requirements. The utilities are awarded for the risks associated with their investment decisions through their cost of capital. Ratepayers pay for the risks associated with a utilities' generation decisions, capital investment and capital improvements, etc. through the cost of capital. CCT is not a cost of service - it is a social type of cost that has nothing to do with a customer's service. Yet the goal appears to be, based on the record so far, to place the majority of the burden of the utilities' coal generation decisions and the resulting societal cost on the residential ratepayers.

⁶ RUCO-1 at 12.

1 The CCT cost itself and the components which make up the cost still lack any
2 definition, calculation methodology, or analytical structure. What is before the Commission, as
3 a result of the docket is a proposed large financial contribution from the residential ratepayers
4 which is not subject to a quantitative analysis and would be completely arbitrary. Nowhere in
5 the discussion to date does RUCO believe that a viable methodology for determining an
6 appropriate CCT amount been vetted, recommended, or established. Likewise, nowhere in
7 the discussion has a limit of any kind regarding the ratepayer's total CCT obligation related to
8 plant closures been vetted, recommended, or established.

9 Staff's Policy Task Force First Meeting Summaries, dated April 14, 2022 noted:

10 "Todd: CCT will not be just the start of funding - it's a complete
11 negotiated plan to resolve the issues - President did testify in APS rate
12 case that CCT was just the start, but that was before the CCT
agreement with APS was reached⁸."

13 Staff was referring to Todd Kimbrough - the attorney for the Navajo Nation. The APS
14 agreement with the Nation Mr. Kimbrough referenced was rejected by the Commission.
15 Likewise, the Hopi Nation was not happy with the Agreement, and it did not represent the
16 Hopi's interests or any other affected community.

17 Before determining a CCT award, ratepayers deserve to know the extent of their
18 liability - the total amount, whether the obligation will be finite or on-going, etc. At this point, it
19 is unclear with regard to the Four Corner's closure which communities outside the ones under
20 consideration (Navajo and Hopi) will request CCT funding and/or even be eligible. What the
21 Commission has done and will continue to do based on the record to date will be a series of

23 ⁷ See RUCO's Closing Brief in Docket No. E -01345A-19-0236 at 18 - 22.

24 ⁸ See Staff's Policy Task Force First Meeting Summaries in the CCT Generic docket dated April 14, 2022, at
page 19.

1 one-off decisions which will only create confusion as residential ratepayers try to understand
2 the basis and the extent of their potential liability for CCT costs.

3 There is no question that the economies of the communities in question were sustained
4 or at the very least benefited from the plants in question for decades. The level of benefit, for
5 example, was spelled out by SRP in the recent TEP case.⁹ SRP sets forth all of the ways it
6 believes it has contributed towards the transition so far. Id. Perhaps more CCT contributions
7 are warranted, but that does not in any way discount the economic benefits enjoyed by the
8 affected communities to date. That may explain to some degree the reason other
9 communities where fossil fuel plants are closing have not requested similar relief. The record
10 in the generic docket seems to view CCT funding as a given societal obligation with an eye
11 that only looks forward in assessing responsibility. The Commission, however, must be far
12 more insightful when considering the extent of ratepayer responsibility.

13 The ratepayers will certainly want an accounting for any increases in their rates. That
14 accounting should include a showing of cost vs. benefit for the contemplated CCT costs. The
15 question of which class of ratepayers should share in the CCT costs and to what degree will
16 need to be addressed. To the extent it can be shown that the classes of ratepayers are
17 responsible to any degree, the next determination should be a determination of class
18 responsibility. If it is determined that the commercial and industrial classes benefited also, the
19 burden should be apportioned appropriately. On its face, it would appear that any "benefit"
20 would inure to all classes equally which would make apportionment of the cost easy to
21 determine. Typically, a Cost of Service Study determines the total costs incurred by a utility in
22 providing service to its customers and the allocation of those costs to customer classes. The
23

24 ⁹ See Exhibit 50-52 in Docket No. E-01933A-19-0028

Commission may want to consider this additional tool when determining ratepayer responsibility allocations.

Benefits aside, from RUCO's view of the generic docket so far, the question of ratepayer vs. shareholder responsibility remains with no persuasive or sufficient evidence supporting residential ratepayer liability offered. Chairwomen Marquez Peterson notes:

"If ratepayers are responsible for the disparate impacts that communities have faced as a result of coal, then the direct disbursement of ratepayer funds to coal-impacted communities may be appropriate, but if utilities are responsible for such impacts, then the Commission's authority is extremely limited; the Commission cannot compel a utility to spend shareholder funds."¹⁰

The Commission, not the utility or the Nation, should decide, based on substantial evidence, whether there is responsibility and if so, who is responsible.

THE GENERIC DOCKET LACKED SPECIFICITY, DETAILS AND SUBSTANTIAL ARGUMENT/EVIDENCE NECESSARY TO ENDORSE CCT

Again, as Chairwoman Marquez Peterson's letter and other documents in this docket made clear, the purpose of the generic docket was to ask questions, garner information and determine what a fair resolution to the CCT question is. The Chairwoman made it clear that the rhetoric of the third-party interests used at the Commission to force ratepayers and coal impacted communities to change through policy and ratemaking has done more harm than good.

<https://docket.images.azcc.gov/0000200995.pdf?i=1650388894800>

¹⁰ Chairwoman Marquez Peterson Letter of February 25, 2022 in this docket at page 2

1 RUCO is also not persuaded by the rhetoric. RUCO is persuaded by detail and
2 specificity concerning costs, benefits, and other facts relevant in deciding the issue. The lack
3 thereof in the generic docket is alarming.

4 In its April 20, 2022 Comments filed in this docket, the Navajo Nation noted the
5 following in its Section entitled:

6 **“POTENTIAL FOCUS AREAS FOR CCT FUNDS”**

7 The Nation would anticipate that some amount of the CCT funds could
8 be used to render NGS and FCPP sites used and useful in some new
way following the early retirements.¹¹

9 This response provides no clarity or certainty regarding the disposition of a CCT award. An
10 award under this type of scenario would allow the Commission to only hope that the Tribe
11 would use the funds for a legitimate purpose and then at an amount the Tribe, not the
12 Commission determines. Ratepayers would have little, if any assurance that the funds would
13 be used for an appropriate purpose.

14 During the most recent CCT workshop, RUCO asked about the \$10 million of CCT
15 funds the Commission recently awarded and for what it is being used. Mr. Kimbrough - the
16 attorney for the Navajo Nation - responded that the Nation is preparing a filing with the ACC to
17 describe the uses of funds.¹² RUCO awaits the Nations filing but believes such considerations
18 should be known before the Commission makes any awards in the future. Ratepayers, if held
19 responsible, will certainly demand that their money be used for purposes connected to the
20 plant closings, and the transition.

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23 ¹¹ See “The Navajo Nation’s Comments related to Commissioner’s Questions” dated April 20, 2022 at pages
in this docket at page 3-4.

24 ¹² See Staff’s Policy Task Force First Meeting Summaries in the CCT Generic docket dated April 14, 2022,
at page 19.

1 It would seem that before the Commission should consider a CCT award a clear tie
2 between any award and the Community's transition would be required to be shown. However,
3 after attending the workshops and reading the filings, RUCO is not sure the affected
4 Community's believe as a predicate to an award or the use of the funds that such a
5 relationship exists. For example, on several occasions in its Comments, the Nation claims that
6 the "CCT should not be viewed as a broader tool of social justice":

7 "...the scope of the CCT does not include broader social justice
8 questions or costs caused by entities that are not subject to
9 Commission regulation. Consequently, issues caused by third parties
10 are outside of the CCT. **The CCT relates to the costs caused by the
11 early retirement of coal-fired power plants that have been
historically included in the rate base of utilities regulated by the
Commission and the mitigation measures that have become
necessary because of those early retirements.**"¹³ (Emphasis
added)

12 The Nation, however, cites directly to the funds possible use to address "broader social
13 justice." According to the Nation, the funds could be considered to solve the "worker
14 displacement issue."¹⁴ Likewise, the funds could be used for healthcare and access to
15 utilities, as well as addressing water and plumbing issues in the Nation.¹⁵ According to the
16 Nation "...approximately one-third (1/3) of the Nation does not have access to running water
17 or indoor plumbing facilities. The lack of access to water directly affects public health and the
18 ability to develop the local economy."¹⁶

19 RUCO does not dispute the resource needs of the Nation or any affected community.
20 Nor is RUCO unsympathetic to the Nation's plight on these resource needs. Neither is the
21 issue - the issue is whether those concerns are a legitimate cost consideration of utility

23 ¹³ See Nation's Comments at 2 and 7.

24 ¹⁴ Id. at 5.

¹⁵ Id. at 6, 11.

1 ratepayers. As noted above, according to the Nation, the CCT “relates to the costs caused by
2 the early retirement of coal-fired power plants.”
3

4 **CONCLUSION AND RECOMMENDATIONS**

5 RUCO believes that the Comments provided above make the point that at this time,
6 based on this record, as well as the records of previous rate cases where the CCT has been
7 at issue, there is insufficient, and certainly not substantial evidence to support a CCT policy or
8 award providing recovery from the residential ratepayers. RUCO does not feel it is necessary
9 to belabor the point as any additional comments RUCO would raise weigh against any type of
10 award or policy. Accordingly, RUCO recommends the Commission deny CCT relief from
11 residential ratepayers until such time as its proponents can support such a request with
12 substantial and persuasive evidence.
13

14 RESPECTFULLY SUBMITTED this 15th day of July 2022

15
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18 E-filed this 15th day of July 2022
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24 ¹⁶ Id, at 7.